

**TO: Honorable Anthony J. Scirica, Chair
 Standing Committee on Rules of Practice
 and Procedure**

**FROM: Honorable A. Thomas Small, Chair
 Advisory Committee on Bankruptcy Rules**

DATE: May 10, 2002

**RE: Report of the Advisory Committee on
 Bankruptcy Rules**

I. Introduction

The Advisory Committee on Bankruptcy Rules met on March 21-22, 2002, in Tucson, Arizona. The Advisory Committee considered public comments regarding proposed amendments to the Bankruptcy Rules and Official Forms that were published in August 2001.

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The Advisory Committee also approved a preliminary draft of a proposed amendment to Bankruptcy Rule 9014, and will present that amendment to the Standing Committee at its June 2002 meeting with a request that the proposal be published for comment. This

amendment is set out in Part II C of this Report.

II. Action Items

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C. Preliminary Draft of Proposed Amendments to Bankruptcy Rule 9014

1. *Synopsis of Proposed Amendments:*

Rule 9014 is amended to limit the applicability of the mandatory disclosure provisions of Rule 26 of the Federal Rules of Civil Procedure made applicable in contested matters in bankruptcy cases by Bankruptcy Rule 7026. Contested matters typically are resolved more quickly than the time that would elapse under the normal application of the mandatory disclosure provisions of Fed. R. Civ. P. 26. Those disclosure requirements continue to apply in adversary proceedings, and the court can order that they apply in a particular contested matter.

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**PROPOSED AMENDMENTS TO THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE***

Rule 9014. Contested Matters.**

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2 (c) APPLICATION OF PART VII RULES. Except
3 as otherwise provided in this rule, and unless ~~Unless~~ the court
4 directs otherwise, the following rules shall apply: 7009, 7017,
5 7021, 7025, 7026, 7028-7037, 7041, 7042, 7052, 7054-7056,
6 7064, 7069, and 7071. The following subdivisions of Fed. R.
7 Civ. P. 26, as incorporated by Rule 7026, shall not apply in a
8 contested matter unless the court directs otherwise: 26(a)(1)
9 (mandatory disclosure), 26(a)(2) (disclosures regarding expert
10 testimony) and 26(a)(3) (additional pre-trial disclosure), and
11 26(f) (mandatory meeting before scheduling
12 conference/discovery plan). An entity that desires to

* New material is underlined; matter to be omitted is lined through.

** Text of rule based on amendments that take effect on December 1, 2002, unless Congress takes action otherwise.

2 FEDERAL RULES OF BANKRUPTCY PROCEDURE

13 perpetuate testimony may proceed in the same manner as
14 provided in Rule 7027 for the taking of a deposition before an
15 adversary proceeding. The court may at any stage in a
16 particular matter direct that one or more of the other rules in
17 Part VII shall apply. The court shall give the parties notice of
18 any order issued under this paragraph to afford them a
19 reasonable opportunity to comply with the procedures
20 prescribed by the order.

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COMMITTEE NOTE

The rule is amended to provide that the mandatory disclosure requirements of Fed. R. Civ. P. 26, as incorporated by Rule 7026, do not apply in contested matters. The typically short time between the commencement and resolution of most contested matters makes the mandatory disclosure provisions of Rule 26 ineffective. Nevertheless, the court may by local rule or by order in a particular case provide that these provisions of the rule apply in a contested matter.

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